IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.760 OF 2004

Association of Engineering Workers ...Petitioners

v/s

M/s Killick Nixon Ltd. ...Respondents

Mr N.M. Ganguli for Petitioners.

None for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 3RD JULY 2006.

P.C. :-

1. By this petition, the petitioners challenge the award dated 28th July 2003 passed by the Labour Court in Reference (IDA) No.383 of 1994 in so far as it denies 50 % back wages to the petitioners and gives an option to the employer to pay Rs.85,000/- to the petitioners in lieu of reinstatement and back wages. The submission of the learned counsel appearing for petitioners is that once the Court found that the petitioners were entitled to reinstatement in service, if the Court wanted to deprive the petitioners of 50 % of the back wages, it was for the Court to give reasons for doing so. Similarly, if the Labour Court wanted to give to the employer an option of not reinstating the petitioners in service and not paying 50 % back wages and paying only Rs.85,000/- in lieu thereof, it was for the Labour Court to give reasons, firstly why it was necessary for the Court to follow such a course and secondly to indicate how the Court has arrived at the figure of Rs.85,000/- as adequate compensation. None appears for the respondents. I have perused the record. The Labour Court found that the termination of the petitioners was illegal and then it referred to the normal rule that if the Court finds that the termination is illegal and the employee is entitled to

reinstatement, then he will be entitled for full back wages. The Court also referred to the rule that the Court can depart from this general rule in exceptional circumstance. The Court has also found that if the Court finds that it is inequitable to direct the employer to pay full back wages, then the Court can mould the relief. The Court refers to the submission made on behalf of the employer that the financial position of the Company is not good, but the Court observes that there are no pleadings to that effect and there is no material placed on record by the employer that the financial position of the employer is not good. Though the Court records that the employer has neither placed material on record to show that there are reasons in existence for denying 50 % back wages to the employees, the Court nevertheless denies 50 % of the back wages to the employees. Thus, I find that the submission made on behalf of the petitioners that the Labour Court has not given any reason why 50 % of the back wages are to be withheld has substance and has to be accepted. Now in so far as the aspect of option given to the employer is concerned, the Court refers to the argument of the employer that the employer is unable to pay, but the Court itself observes that there is no evidence placed on record by the employer to prove that. The Labour Court, however, proceeds to give option to the employer of not reinstating the employees and not

paying them 50 % back wages by referring to the period of their non-employment, their wages and total period of employment with the employer till the date of award and the remaining period of employment. In my opinion, the reasons given by the Labour Court for giving the opinion to the employer are vague. Once the labour Court did not accept the submission on behalf of the employer that it has no capacity to pay and it cannot reinstate the employees, then there was no justification for giving option to the employer not to reinstate the employees and not to pay them 50 % of back wages by paying only Rs.85,000/- to them. I find that no cogent reason has been given by the Labour Court for giving this option to the employer. The award made by the Labour Court denying 50 % of the back wages to the petitioners and giving option to the employer not to reinstate the employees suffers from non-application of mind and has been passed in breach of the principles of natural justice and therefore, it is liable to be set aside.

2. It may be pointed out that writ petition filed by the employer challenging the award has already been dismissed by the learned Single Judge of this Court and that order has been confirmed in appeal.

3. The petition therefore succeeds, that part of the award made by the Labour Court dated 28th July 2003

made in Reference (IDA) No.383 of 1994 denying 50 % of the back wages and giving option to the employer not to reinstate the petitioners is set aside. The respondents are directed to pay to the petitioners full back wages. Rule is made absolute accordingly with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.